

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

DENNIS ALAN WALTERS, )  
                            )  
Petitioner,             )  
                            )  
vs.                      )       **Case No. CIV-08-1391-C**  
                            )  
JIM KEITH, Warden,<sup>1</sup> )  
                            )  
Respondent.            )

**REPORT AND RECOMMENDATION**

Petitioner, a state prisoner appearing *pro se*, has filed a motion for leave to proceed *in forma pauperis* and supporting affidavit. Pursuant to an order entered by United States District Judge Robin Cauthron, this matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). Having reviewed said motion, the undersigned finds that Petitioner has sufficient funds to prepay the filing fee of \$5. Because he does not qualify for authorization to proceed without prepayment of the filing fee, it is recommended that Petitioner's motion [Doc. No. 2] be denied and that he be ordered to prepay the full \$5 filing fee for this action to proceed. 28 U.S.C. § 1915(a)(1). See Lister v. Department of the Treasury, 408 F.3d 1309, 1312 (10th Cir. 2005) (magistrate judge should have issued a report and recommendation, recommending denial of the motion

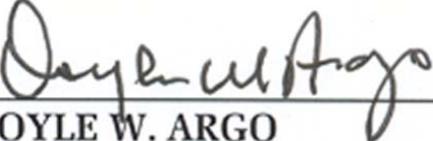
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<sup>1</sup>The Petitioner listed the Attorney General, the State of Oklahoma and Oklahoma County District Attorney as Respondents. However, where the applicant is presently in custody pursuant to the state judgment in question, the state officer having custody of the applicant is the properly named respondent. Rule 2, Rules Governing Section 2254 Cases in the United States District Courts. Therefore, the Attorney General, the State of Oklahoma and Oklahoma County District Attorney are dismissed and Jim Keith is substituted as the only proper Respondent.

to proceed *in forma pauperis*.).

It is further recommended that unless Petitioner pays the \$5 filing fee in full to the Clerk of the Court on or before the 26<sup>th</sup> day of January, 2009, this action be dismissed without prejudice to refiling. Petitioner is advised that failure to timely object to this Report and Recommendation waives the right to appellate review of both factual and legal issues contained herein. Moore v. United States, 950 F. 2d 656 (10th Cir. 1991). The Clerk is hereby ordered not to forward a copy of the petition to the appropriate state agency until further order of the Court.

ENTERED this 6<sup>th</sup> day of January, 2009.

  
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DOYLE W. ARGO  
UNITED STATES MAGISTRATE JUDGE